IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1415 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LIYAKATKHAN PIRUBHAIKHAN - Appellant(s)
Versus
GUJ STATE ROAD TRANSPORT CORPN - Defendant(s)

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Appearance :
MS PAURAMI B SHETH for Appellant
MS MAYA DESAI for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/09/2007

ORAL JUDGMENT

1. Ms. Pauromi B. Sheth, learned counsel for the appellant; Ms. Maya Desai, learned counsel for the respondent.

2. The appellant-claimant, being partly aggrieved by the award dated 28th January, 1985 passed by the Motor Accident Claims Tribunal [Main], Surendranagar in Motor Accident Claims Petition No. 254/83 is before this Court with a submission that the Tribunal was unjustified in awarding a sum of Rs. 14,400/- only against the claim of Rs.1.00 lakh.

3. In absence of any Cross Objections or Cross Appeal by the other side, this Court would be required to examine the question of adequacy of compensation only. Learned counsel for the appellant, after taking me through the Division Bench judgments of this Court in the case of Ahmedabad Municipal Corporation v. Niranjan Ambalal Patel, [1982 [2] GLR 180] and in the case of Gurdipsinh, son of Bisensingh Sadhu v. Chauhan Bhupendrakumar Udesing [1980 GLR 221], submitted that the Tribunal was unjustified in holding that the appellant has not suffered any future economic loss. She submitted that if integrity of the body as a whole is adversely affected by the injuries and, the marketability

of such person is adversely affected, then, the Court should award compensation taking into consideration the injuries suffered by such person. It was also submitted that the appellant had undergone two operations and had stayed in hospital for 50 days and was still required to undergo one more operation, then, the Tribunal could have awarded something more under the head of “pains and sufferings” so also under the head of “future expenses” for undergoing operations.

4. Ms.Desai, learned counsel for the respondent however submitted that the two cases on which strong reliance has been placed were on different facts, the Tribunal therefore, was not unjustified in holding that there was no future economic loss. She also submitted that the appellant is not entitled to claim anything under the head of pain, shock and suffering nor would be entitled to anything to meet the future expenses to undergo operation.

5. In the matter of Ahmedabad Municipal Corporation [supra], the Division Bench of this Court has held as under:-

"It is essential to bear in mind that loss arising on account of deprivation of future earnings is itself divisible into two distinct categories: loss of future earnings and loss of earning capacity. The loss of future earnings consists of the estimate formed of the real assessable pecuniary loss of wages, income or profits, which is likely to be suffered by the injured person after the date of the trial as a result of the accident. On the other hand, where an injured person is still able to earn his pre-accident wages performing his pre-accident work or by obtaining another employment or taking to another trade or profession, which is more suited to his handicap or currently inferior state of fitness, he has no claim for loss of future earnings. This does not necessarily mean, however, that he can claim no compensation whatever for future pecuniary loss. He may be able to claim that he has suffered some reduction in his capacity to earn money on account of the damage presumed to flow from the injury sustained, such as any prejudice to his advancement in the chosen career, or chances of getting another equally paid job in case he loses his present employment, or securing a better paid form of employment

open to him, or of his being promoted to a higher post at his present place of work."

6. The Division Bench has also observed that;

"Two aspects must, however, be kept in mind in quantification of the damages: first, there must be a "substantial" or "real" [and not "speculative" or "fanciful"] probability of risk of loss of earning capacity and, secondly, the damages must be assessed and quantified, having regard to all sorts of variable factors, such as, for example, the injured person's age, his skill, the nature and degree of his disability, whether he is capable of one type of work only or whether he is, or could become, capable of others, the general employment situation or prospects of advancement in his trade, profession or vocation and area, or both, the probability and time when the loss may materialize and so on and so forth. Factors, both favourable and unfavourable, which, in a particular case, will, or may, be relevant, must be weighed and considered."

7. In the present matter, undisputedly, the appellant was working as Conductor and has not been demoted nor has been sacked from the services because of the disability suffered by

him. He is getting same salary and undisputedly his future prospects are not adversely affected. It was sought to be contended by the learned counsel for the appellant that future prospects of the appellant are adversely affected, because, now he cannot get any promotion to the post of Traffic Controller. Nothing has been brought on the records to show or suggest that even after the accident, the appellant had appeared in the examination or his case was ever rejected because of the physical disability suffered by him.

8. In the matter of Gurdipsinh Sadhu [supra], the Court has observed that the claimant was working in the field and was getting certain allowances, since after suffering the injuries, he was removed from the field work and the allowances which the claimant was getting were stopped. The Court also observed that the claimant was not in a position to do his work satisfactorily and he was not fully fit for any type of field work. The Court also found that incapacity suffered by him in all probability was bound to

affect his chances of promotion and his chances in the labour market were bound to be affected. In the present matter, it has not come on the records that the claimant-appellant was to leave his job and was opting for some other service. He was a Conductor; he continued to be a Conductor and by now, he may still be working as Conductor, if not retired. In the matters of service, a person gets regular increment if there are no adverse reports against him and also gets scales which are even otherwise available to able bodied Conductor. Under the circumstances, I am unable to hold that the Tribunal was unjustified in not granting any amount under the head of “future loss of earning/income”.

9. So far as the amounts under the head of “pain, shock and suffering” are concerned, this Court is of the opinion that in view of the facts, the appellant should get a sum of Rs.8000/- in addition to what has already been awarded to him. He would also be entitled to a sum of Rs.5,000/- under the head of expenses for future

operation.

10. In addition to what has been awarded to the appellant, the appellant would be entitled to a sum of Rs. 13,000/- with interest @ 6% per annum from the date of the Claim Petition till realization.

11. The appeal to the extent indicated above, is allowed. No costs.

[R.S. GARG, J.]

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